

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0347
CORPORATE INCOME TAX
For Years 1997, 1998, 1999, 2000, and 2001**

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ISSUES

I. Gross Income Tax – Management fees

Authority: None

Taxpayer protests the imposition of income tax on management fees at the high rate instead of the low rate of tax.

II. Gross Income Tax – Advertising fees

Authority: 45 IAC 1.1-2-4(a)(4)(A)

Taxpayer protests the imposition of income tax on advertising fees collected from an Indiana limited partnership under the control of taxpayer.

STATEMENT OF FACTS

Taxpayer is an out-of-state corporation with retail activities outside Indiana. Taxpayer is the sole parent corporation of two other out-of-state corporations, one of which is a 99% owner in an Indiana limited partnership("partnership"), the other is a 1% owner in the same partnership. All retail operations for all of the affiliated companies are outside Indiana except for the Indiana limited partnership.

Taxpayer filed consolidated Federal income tax returns with all affiliated entities during the audit period. All state returns, including Indiana, were filed on a separate basis.

The auditor claims that taxpayer has income from management fees and co-op advertising fees charged to subsidiary companies, including the Indiana limited partnership. These fees are at the center of this protest as they were picked up on audit as being income for the taxpayer.

I. Gross Income Tax – Management fees

DISCUSSION

Taxpayer has acquiesced on this point.

FINDINGS

Taxpayer is respectfully denied.

II. Gross Income Tax – Advertising fees

DISCUSSION

Taxpayer claims that it does not receive fees for advertising from the Indiana limited partnership. Rather, taxpayer claims that the partnership reimburses taxpayer for the partnership's own expenses that were previously paid for by taxpayer.

Taxpayer's position is that it contracts with third party vendors for advertising services for its various retail outlets. Some of these third parties are domiciled within Indiana, but most are without. Taxpayer pays on said contract and subsequently receives a dollar-for-dollar reimbursement from the partnership along with a management fee that taxpayer claims and on which it pays income tax. Taxpayer claims that the only taxable income received in this situation is by the third party vendors who provide the advertising services.

However, the Department's position is that taxpayer is dealing firstly with its own subsidiary, partnership. The contract is between taxpayer and partnership for the sale of performance of advertising services. The provision of services of any character is subject to the gross income tax. 45 IAC 1.1-2-4(a)(4)(A). Taxpayer then contracts with a third party to physically perform the service. This does not alter the fact that taxpayer initially contracted to, and subsequently receives payment for, the service.

Taxpayer may not contract away its gross income tax liability by contracting with outside parties to perform services. The fact that a third party, not taxpayer, performed the service is irrelevant.

FINDINGS

The taxpayer is respectfully denied.

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